



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 023 62452

Office: New York

Date: FEB 28 2008

IN RE:

Applicant:

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a light-colored background.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserted that documentation to support his claim of residence in this country for the requisite period was no longer available because such documents had been lost over the years. The applicant indicated that he was submitting photographs in support of his appeal.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of

evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on January 8, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] in New York, New York from December 1980 to January 22, 1991, the date the Form I-687 application was submitted. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant testified that he traveled to the Dominican Republic because of a death in his family from May 12, 1987 to June 10, 1987. At part #36 of the Form I-687 application where applicants were asked to list employment in the United States since first entry, the applicant listed employment as a cashier for Sunday Grocery Store in New Brunswick, New Jersey from December 1981 to June 1990.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted three original envelopes postmarked December 19, 1981, February 11, 1982, and September 23, 1985, respectively. While the applicant also included two additional postmarked envelopes, the postmark is not completely legible on one of the envelopes and the other envelope’s postmark did not contain any date. All of the envelopes were purportedly mailed from the Dominican Republic to the applicant at that address he listed as his address of residence during the requisite period at part #33 of the Form I-687 application.

The applicant provided an original receipt dated June 15, 1982 from Save Mart Television, Audio, and Video Centers in the Bronx, New York. The receipt listed the applicant as the purchaser of three items for \$40.97.

The applicant submitted an original receipt dated March 15, 1984 from Continental Jewelry in West New York, New Jersey. The receipt listed the applicant as the purchaser of two items for \$194.99.

The applicant included an original receipt dated March 19, 1984 from Passaic County Stationery Co., Inc., in Paterson, New Jersey. The receipt listed the applicant as the purchaser of three items for \$21.98.

The applicant provided an original receipt dated May 4, 1985 from Latina America Express in New York, New York. The receipt listed the applicant as the remitter of \$50.00 sent to an individual in the Dominican Republic.

The applicant submitted an original receipt dated March 3, 1986 from Fordham Furniture Values in the Bronx, New York. The receipt listed the applicant as the purchaser of a single item for \$396.95.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] stated that she could attest that the applicant had resided at 8 [REDACTED] in New York, New York since 1980. [REDACTED] noted that the basis of her knowledge regarding the applicant's residence in this country derived from the fact that she was a good friend of the applicant since both had lived in the Dominican Republic and that she and the applicant had been girlfriend and boyfriend.

The applicant provided an affidavit signed by [REDACTED] who asserted that he had personal knowledge that the applicant resided at the [REDACTED] address in New York since December 1980. [REDACTED] declared that he had been acquainted with the applicant prior to such date while both he and the applicant were living in the Dominican Republic.

The applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] contended that the applicant resided with her at [REDACTED] in New York, New York as a boarder paying \$50.00 per week as rent since December 1980.

The included an employment affidavit dated December 26, 1989 and signed by [REDACTED] that contained the letterhead of the Sunday Grocery Store in New Brunswick, New Jersey. [REDACTED] stated that the applicant had been an employee of this grocery store from December 1981 up through the date the affidavit had been executed. However, [REDACTED] failed to provide the applicant's address of residence during that period he was employed by Sunday Grocery Store, failed to list the applicant's duties at this establishment, did not declare whether the information relating to the applicant was taken from company records, and failed to identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided an affidavit signed by [REDACTED] who declared that he had personal knowledge that the applicant was absent from the United States when he traveled to the Dominican Republic on May 15, 1987 and returned to this country on June 10, 1987. However, [REDACTED]'s testimony that the applicant traveled to the Dominican Republic on May 15,

1987 conflicted with the applicant's testimony at part #35 of the Form I-687 as the applicant testified that he traveled to the Dominican Republic on May 12, 1987. Further, [REDACTED] failed to provide any direct and specific testimony relating to the applicant's residence in the United States during the requisite period.

The applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] noted that he had driven the applicant to the Dominicana Airlines Terminal at John F. Kennedy International Airport in New York on May 12, 1987. Regardless, [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 through May 4, 1988.

Subsequently, on October 23, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant provided copies of previously submitted documentation but failed to include any new evidence in support of his claim of residence in the United States for the requisite period.

On January 23, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice. The record shows that the applicant failed to respond to the notice.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on May 5, 2004.

On appeal, the applicant asserted that documentation to support his claim of residence in this country for the requisite period was no longer available because such documents had been lost over the years. Although the applicant indicated that he was submitting photographs in support of his appeal, the record does not contain any photographs.

As previously discussed, the applicant submitted original postmarked envelopes with the Form I-687 application that was filed on January 8, 1990. These envelopes included an original envelope postmarked February 11, 1982 that was mailed to the applicant from the Dominican Republic at the address he claimed to have resided during the requisite period. A review of the *2008 Scott Standard Postage Stamp Catalogue Volume 2* (Scott Publishing Company 2007), reveals the following regarding the Dominican postage stamp affixed to the envelope:

- This envelope bears a postage stamp with a value of 35 correos that contains a stylized illustration of an adult and child on the outline of a map of the Dominican Republic. This stamp contains the seal of Activo 20-30 International and commemorates the twenty-fifth anniversary of the founding of this organization. This stamp is listed at page 861 of Volume 2 of the *2008 Scott Standard Postage*

*Stamp Catalogue* as catalogue number 1001 A361. The catalogue lists this stamp's date of issue as August 27, 1987.

The record shows that the applicant included another original envelope postmarked September 23, 1985 that was mailed to him from the Dominican Republic at the address he claimed to have resided during the requisite period. A review of the *2008 Scott Standard Postage Stamp Catalogue Volume 2* (Scott Publishing Company 2007), reveals the following regarding the Dominican postage stamp affixed to the envelope:

- This envelope bears a postage stamp with a value of 35 correos that contains a stylized illustration of sailboats racing in the Fourth Admiral Cristobal Colon Regatta, Casa de Espana in 1985. This stamp commemorates the 500<sup>th</sup> Anniversary of the discovery of America by Christopher Columbus. This stamp is listed at page 8601 of Volume 2 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number 951 A339. The catalogue lists this stamp's date of issue as October 10, 1985.

The fact that envelopes postmarked February 11, 1982 and September 23, 1985, respectively, both bear stamps that were not issued until well after the date of these postmarks established that the applicant utilized these documents in a fraudulent manner and made material misrepresentations in an attempt to establish residence within the United States for the requisite period. By engaging in such an action, the applicant seriously undermined his credibility as well as the credibility of her claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

Section 212(a)(6)(C) of the Immigration and Nationality Act (Act) provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that the applicant misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions for the LIFE Act.

The AAO issued a notice to the applicant on January 31, 2008 informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he utilized the postmarked envelopes

cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision the applicant has failed to submit a statement, brief, or evidence addressing the adverse information relating to his claim of residence in the United States since prior to January 1, 1982. As stated above, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

**ORDER:** The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.